

MICHIGAN JUDGES ASSOCIATION
FOUNDED 1927

February 14, 2003

Corbin R. Davis
Clerk, Michigan Supreme Court
P.O. Box 30052
Lansing, MI 48909



RE: ADM 2002-32
Proposed Amendment of MCR 2.502

Dear Mr. Davis:

At the January 2003 meeting of the Michigan Judges Association, the Rules Committee and the Executive Board considered the proposed amendment of MCR 2.502. MJA disagrees with the proposal to authorize a party to move for dismissal for lack of progress.

The case of Wizinsky v General American Life Company, 466 Mich 892 was discussed in relation to this proposed amendment. Recognizing that the facts in Wizinsky are unique, we question whether there is a need to amend MCR 2.502 to address the unique situation presented in Wizinsky.

We disagree with this proposed amendment. We cannot understand what will be accomplished by allowing a party to file a motion to place a matter on the no-progress docket. The filing of such a motion would put the opposing party on notice and give the party an opportunity to be heard on the merits of the motion. If a Court granted the motion, the Court would then have to take another ministerial step to place the matter on the no-progress docket, which pursuant to MCR 2.502A would require the Court to then notify the parties that the matter would be dismissed unless progress was shown. Traditionally, the no-progress docket was utilized as a ministerial vehicle by the Court to advance cases on the docket or dismiss cases. Almost all courts in the state are now utilizing scheduling orders pursuant to MCR 2.401. These orders are usually entered after an answer is filed or at some other period within the first 91 days of being filed. Pursuant to MCR 2.502(A)(2) a notice of a proposed dismissal may not be sent with regard to a case in which a scheduling order has been entered and the times for completion of the scheduled events have not expired.

Scheduling orders usually include dates for conferences, alternative dispute resolution process and trial. Consequently, a notice of a proposed dismissal may not be sent with regard to a case which is set for any of those events.

Assuming that the majority of courts in the state enter scheduling orders, it seems that allowing a party to move to have an action placed on the no-progress calendar will in most cases be a

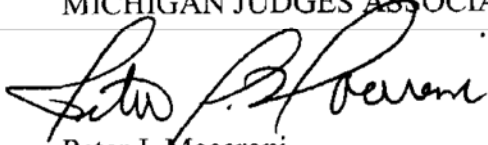
useless act because of the provisions of MCR 2.502(a)(2). If MCR 2.502 is to be amended, perhaps it is time to consider amendments which take into account scheduling orders and alternative dispute resolution.

It appears that there is a variety of practices pertaining to no-progress dockets. In some counties it may be an annual event while in other counties it may be semi-annually or quarterly. While it may seem to be a simple matter to allow a party to file a motion to place a case on the no-progress docket, there are collateral and perhaps unintended consequences on the workload of the Court. Whether the filing of such a motion by a party will actually advance the case is open to question.

We thank the Court for considering our comments on this matter. If the Michigan Judges Association may provide any further information or assistance, we stand ready to assist the Court.

Sincerely,

MICHIGAN JUDGES ASSOCIATION

A handwritten signature in black ink, appearing to read "Peter J. Maceroni", written over a horizontal line.

Peter J. Maceroni
President

cc: Maura D. Corrigan, Chief Justice
Linda Mohny Rhodus, Administrative Counsel
Hon. Richard Ryan Lamb
Hon. Nanci J. Grant